

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CRYOVAC, INC.,)
)
Plaintiff/Counter-Defendant.) Civil Action No. 04-1278
)
vs.) Hon. Kent A. Jordan
)
PECHINEY PLASTIC PACKAGING, INC.,)
)
Defendant/Counter-Plaintiff.)
)

PECHINEY'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON LOST PROFITS

1. Pursuant to Fed. R. Civ. P. 56, Defendant/Counter-Plaintiff Pechiney Plastic Packaging Inc. ("Pechiney") respectfully moves for partial summary judgment on Plaintiff/Counter-Defendant Cryovac, Inc.'s claim for lost profits as a measure of its patent infringement damages. There is no dispute as to any material fact, and Pechiney is entitled to partial judgment as a matter of law.

2. Pechiney concisely states the issue appropriate for summary judgment as follows:

A. Cryovac is not entitled to lost profits damages because of the availability of non-infringing alternatives during the period of infringement.

3. Pechiney submits contemporaneously herewith: (i) Memorandum in Support of Pechiney's Motion for Partial Summary Judgment on Lost Profits; (ii) Pechiney Plastic Packaging, Inc.'s Unified Appendix for Its Motions for Summary Judgment Vols. I-VI; and (iii) Pechiney Plastic Packaging, Inc.'s Unpublished Decisions Cited Within Its Motions for Summary Judgment.

WHEREFORE, there being no genuine issue of material fact, and Pechiney being entitled to partial judgment as a matter of law, Pechiney respectfully request that partial summary judgment be entered in its favor, together with all other just and proper relief.

Respectfully submitted,

PECHINEY PLASTIC PACKAGING, INC.

Dated: October 19, 2005

By: /s/ N. Richard Powers
N. Richard Powers

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of Pechiney's Motion for Partial Summary Judgment on Lost Profits to be served on:

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This 19th day of October, 2005 via federal express and hand delivery.

/s/ N. Richard Powers
N. Richard Powers

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**[PROPOSED] ORDER GRANTING PECHINEY'S MOTION FOR PARTIAL
SUMMARY JUDGMENT ON LOST PROFITS**

THIS MATTER having come before the Court and after consideration of the entire record in support of Pechiney's Motion for Partial Summary Judgment on Lost Profits, this Court finds that:

1. Cryovac is not entitled to lost profit damages.

AND, THEREFORE, IT IS HEREBY ORDERED THAT:

Pechiney's Motion for Partial Summary Judgment on Lost Profits is hereby GRANTED pursuant to Fed. R. Civ. P. 56 and judgment is hereby ENTERED in favor of Pechiney and against Cryovac on Cryovac's claim for lost profit damages.

DATED: _____

The Honorable Kent A. Jordan

Submitted by:

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